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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,663	11/29/2001	Daniel Raymond Cerone	8794	4856

27752 7590 07/21/2005

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/21/2005

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/996,663
Filing Date: November 29, 2001
Appellant(s): CERONE ET AL.

MAILED

JUL 21 2005

Group 3700

David K. Mattheis
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 6, 2005 appealing from the Office action mailed September 13, 2004.

(1) ***Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

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(2) *Related Appeals and Interferences*

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 1-20.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statement of the issues in the brief is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

WO 01/51378

HUPP

7-2001

(10) Response to Argument

Appellant argues the rejection under 35 USC 112, 2nd paragraph involves enablement. However, it is pointed out that enablement falls under the auspices of 35 USC 112, 1st paragraph. The rejection previously set forth relates to the lack of structure and/or structural

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relationships between the parts of the container set forth in the claims. For instance, claim 1 sets forth a container body and a cover. Wherein "container body" and "cover" are broad, there is no structure set forth in the claims to determine how the structure relates to other parts to the claimed invention. For example, how is the fastener disposed between the container body and the cover? What structure of a container body and a cover allows for a reclosable fastener therebetween? And what is the difference between the track comprising a fastener portion formed on the reclosable fastener and the reclosable fastener. Again, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The independent claims do not provide sufficient structure to describe the instant invention to one of ordinary skill in the art without reference to the drawings and specification.

Regarding the rejection under 35 USC 102(b), the patent to Hupp anticipates the claimed invention for the following reasons:

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the ramp is not in the plane with the reclosable fastener) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993):

Additionally, the language of the prior art does not have to be the same as the language of the instant application to anticipate or render the structure of the invention obvious. The structure of the container of Hupp is the same as that claimed in the instant applicant. The auxiliary track of Hupp is a ramp where called a ramp or an auxiliary track.

The claimed invention does not set forth structure which is not present in the patent to Hupp. The instant claims sets forth a container body, a cover, a closure fastener, a slider and a

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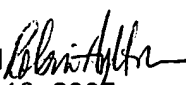
ramp. There is no description of the ramp or its function in independent claims 1 and 19. Claim 18 sets forth the ramp extends from the reclosable fastener at an angle to the XY plane and provides parking for the slider.

Given the broadest reasonable interpretation, the structure referenced as **64** in the patent to Hupp is a ramp, i.e., an inclined passage connecting different levels. Viewing figure 2, the ramp is inclined in a manner to allow the slider to travel past the grooved portion seen between the ramp and the reclosable fastener **62** for parking the slider on the ramp. The ramp is also inclined in at an angle to the XY plane as it connects the horizontal top surface of the flange portion of the container and the cover, and the top horizontal edge thereof


Regarding appellant's remarks directed to the rejection of claim 17, wherein the perimeter is three-dimensional, it inherently defines more than one plane.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

RAH 
July 18, 2005

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